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BEFORE THE
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WASHINGTON, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of

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Amendment of the Commission's

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WT Docket No. 97-82

Rules Regarding Installment Payment

)

Financing For Personal Communications

)

Services (PCS) Licensees

)

To: The Commission

PETITION FOR RECONSIDERATION

**URBAN COMMUNICATORS PCS
LIMITED PARTNERSHIP**

James L. Winston

Lolita D. Smith

Rubin, Winston, Diercks,

Harris & Cooke, L.L.P.

1333 New Hampshire Avenue, N.W.

Suite 1000

Washington, D.C. 20036

(202) 861-0870

Lois E. Wright

Vice President and Corporate Counsel

Inner City Broadcasting Corp.

3 Park Avenue

New York, NY 10016-5902

(212) 447-1000

Its Attorneys

November 24, 1997

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SUMMARY

Urban Communicators PCS Limited Partnership's ("Urban Comm"), wholly owned subsidiary, Urban Comm-North Carolina, Inc., is the licensee of broadband PCS C block licenses in 10 Basic Trading Areas in eastern North Carolina. Urban Comm submits its petition for reconsideration requesting that the Commission change three of the four payment options adopted in the *Second Report and Order and Further Notice of Proposed Rule Making* (Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Licensees), WT Docket No. 97-82, released October 16, 1997 (the "C block R&O"). The options adopted by the Commission do not provide meaningful relief to C block licensees facing financial difficulties. The Commission's response is particularly limited given the nature of proposals and comments given by Urban Comm, other C block licensees and financial analysts in earlier filings with the Commission in this proceeding.

Among the changes Urban Comm requests are:

- 1) an extended deferral period, according to certain performance guidelines detailed herein;
- 2) elimination of the MTA-wide disaggregation requirement, reinstatement of the ninety (90) day default rule as provided in 47 C.F.R. § 1.2110(e)(4)(ii);
- 3) payment of suspension interest in a balloon at the end of the ten year installment period or spread out over a six year period;
- 4) modification of the option to prepay to allow 100% of downpayments and interest payments toward prepayment of licenses.

The enormity of the problems facing C block licenses must be met with a more helpful Commission

response. The changes outlined herein are moderate and conform to the existing framework of the Commission's current menu. These changes are necessary to avoid any further C block bankruptcies. In an effort to promote competition in the marketplace and facilitate participation by small businesses, the Commission should adopt the changes to its menu of options proposed herein.

**BEFORE THE
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WASHINGTON, D.C. 20554**

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To: The Commission

PETITION FOR RECONSIDERATION

Urban Communicators PCS Limited Partnership ("Urban Comm"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby petitions the Commission for reconsideration of the *Second Report and Order and Further Notice of Proposed Rule Making* (Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Licensees), WT Docket No. 97-82, released October 16, 1997 (the "C block R&O"). Urban Comm's wholly owned subsidiary, Urban Comm-North Carolina, Inc. has acquired broadband PCS licenses for 10 Basic Trading Areas ("BTAs") in eastern North Carolina in the C Block.¹ Urban Comm petitions the Commission to reconsider several aspects of the C block R&O set forth below. Specifically, Urban Comm requests the following changes to three of the four payment options adopted by the Commission:

¹ Urban Comm-North Carolina, Inc. also holds F block PCS licenses for 13 BTAs in Virginia and South Carolina.

1) Installment Payments

(a) Extend the payment deferment period for one year, from March 31, 1998 to March 31, 1999, subject to two possible additional one year deferrals if a licensee demonstrates that it has financed construction of its system by the end of the first year of deferral and that it has completed substantial system buildout by completion of the second year of deferrals.

(b) Reinstate the ninety (90) day grace period for payment of installment payments, whether due March 31, 1998, or at a later date.

(c) Suspension period interest payments should be deferred for balloon payment at the end of the ten year installment payment period, or, at a minimum, should be spread out over the six year interest-only period.

2) Disaggregation

Eliminate the requirement that disaggregation be applied on a MTA wide basis, at least as to C block licensees which have all of their licenses in one MTA.

3) Prepayment

(a) Allow a licensee seeking to prepay its licenses to apply 100% of its downpayments and interest payments in order to prepay licenses.

(b) Apply a net present value calculation to the price to be prepaid for a license.

The C Block R&O provided C block licensees with a "menu" of options, which the Commission stated were designed to assist those licensees experiencing financial difficulties to build systems that will promote competition or to surrender the licenses to the Commission for reacution. The Commission adopted four options: (1) resumption of installment payments, (2)

disaggregation, (3) amnesty and (4) prepayment. These options, however, are substantially divergent from proposals put forth by Urban Comm and other C block licensees and industry financiers.

Throughout the lengthy consideration of the issues in this proceeding, Urban Comm and other PCS licensees and commentators advised the Commission that, absent meaningful payment relief, some C block licensees would be forced to seek bankruptcy court protection. Urban Comm submits that, absent reconsideration of the C block R & O, other C block licensees will share the fate of Pocket Communications, Inc., which filed for Chapter 11 protection earlier this year.² Modification of the Commission's current menu options is required to avoid additional C block bankruptcies.

I. BACKGROUND

Broadband PCS C block auctions were concluded on May 6, 1996, fourteen months after the conclusion of the A and B block auctions.³ Two things happened while C block small and start-up companies awaited their licenses: 1) the market for wireless stocks drastically down turned despite all previous indicators and 2) incumbents who won licenses in the A and B blocks built-out their systems with a significant head start.⁴

These circumstances were compounded by the Commission's announcements that it would auction large new bands of spectrum, including Wireless Communications Service (WCS) in

² *Communications Daily*, Vol. 17, No. 125, June 30, 1997, p.5.

³ The PCS auction of A and B block licenses ended on March 13, 1995.

⁴ George Gilder, *Wall Street Journal*, September 16, 1997, A22.

November, 1996,⁵ 800 MHz Specialized Mobile Radio ("SMR") Service in July, 1997,⁶ and Local Multipoint Distribution Service ("LMDS") in March and July, 1997.⁷ At the opposite extreme, existing broadcasters received six additional megahertz of spectrum for digital television, free of charge, with which they will be able to offer subscription based services in addition to over-the-air broadcasting.⁸ Given the abundance of new competitive telecommunications ventures to invest with, Wall Street lost much of its initial incentive to invest in C block licensees.

As a result, several parties jointly requested relief from installment payment obligations. In response, on March 31, 1997, the Wireless Telecommunications Bureau (the "Bureau") suspended the deadline for payment of installment debt for C block licensees.⁹ Suspension for F block payments came shortly thereafter on April 28, 1997.¹⁰ The Bureau then issued the *Installment*

⁵ See "FCC Proposes New Wireless Communications Service In 2.3 GHZ Band Implementing Provision Of 1997 Appropriations Act," *News Release*, GN Docket 96-228, Report No. DC-96-101 (rel. November 12, 1996).

⁶ See "FCC Announces Upcoming Spectrum Auction Schedule, Two Auctions to Commence Before End of the Year," *Public Notice*, DA 97-1627, (rel. July 30, 1997).

⁷ See "FCC Adopts Service And Auction Rules For LMDS," *News Release*, CC Docket 92-297, Report WT 97-11, (rel. March 11, 1997). See "FCC Announces Upcoming Spectrum Auction Schedule, Two Auctions to Commence Before End of the Year," *Public Notice*, DA 97-1627, (rel. July 30, 1997).

⁸ In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, MM Docket No. 87-268, FCC 97-116, (rel. April 21, 1997).

⁹ See In the Matter of Installment Payments for PCS Licenses, *Order*, DA 97-649, (rel. March 31, 1997).

¹⁰ See "FCC Announces Grant of Broadband Personal Communications Services D, E, and F Block Licenses," *Public Notice*, DA 97-883, (rel. April 28, 1997).

Public Notice seeking comment on proposals as well as seeking additional proposals.¹¹ The Commission received over 160 filings.¹²

While the Commission analyzed the issues surrounding installment payments, Urban Comm supplemented its comments in this proceeding with alternative installment payment proposals contained in letters filed with the Commission.¹³

II. THE COMMISSION SHOULD REVISE THREE OF THE FOUR OPTIONS ADOPTED IN ITS C BLOCK INSTALLMENT PAYMENT REPORT AND ORDER

The Commission adopted four options: (1) resumption of installment payments, (2) disaggregation, (3) amnesty and (4) prepayment.¹⁴ Although Urban Comm, other C block licensees, and industry financiers advanced proposals which would have provided more meaningful relief for C block licensees, the Commission's options are a limited response to the financial difficulties recounted by numerous commentors. If the present framework for relief is retained, at a minimum, the Commission should revise three of the four options in the following manner:

A. The Installment Payment Option Should Be Modified In Several Respects

The Commission should extend the date to begin installment payments to March 31, 1999

¹¹ See "Wireless Telecommunications Bureau Seeks Comment On Broadband PCS C and F Block Installment Payment Issues," *Public Notice*, DA 97-679, WT Docket 97-82, (rel. June 2, 1997).

¹² C block R&O, ¶15.

¹³ See letter to Chairman Reed Hundt from James L. Winston, counsel for Urban Comm, dated August 21, 1997 and letter to Chairman Reed Hundt from James L. Winston, counsel for Urban Comm, dated September 17, 1997.

¹⁴ C block R&O, ¶ 1.

and allow one year deferrals for two years thereafter, subject to specific showings. Urban Comm submitted ex parte letters in this proceeding in which it proposed, *inter alia*, that the Commission provide C block licensees with the opportunity to defer installment payments for 3 one-year terms subject to making specific performance showings at the end of the first and second years. Urban Comm's proposal was as follows:

1. Installment Payments Should Be Deferred Beyond March 31, 1998.

A licensee would be granted a one year deferral of interest payments on its debt. In exchange for the deferral, the licensee would agree that the applicable interest rate for the deferral period would be increased by 0.5% above the licensee's currently applicable interest rate ("the deferred interest surcharge"). At the end of that year, the licensee would be required to demonstrate that it has funds on hand sufficient to pay the accrued interest for that year, and must certify that, if given an opportunity to defer the interest payment due at that time, the licensee will use the funds to continue build out of its network. If the licensee meets these tests, the licensee would be granted a second year of deferral of interest payments. At the end of the second year, the licensee would be required to demonstrate that it has sufficient funds to pay its interest due for the second year and also demonstrate that it has made substantial progress toward build out of its network during the preceding year. If the licensee meets these tests, it would be granted a final year of deferral on its debt. At the end of the third year, the licensee would resume quarterly interest payments in accordance with the current payment schedule at its current interest rate.

All accrued and unpaid interest, based upon the deferred interest surcharge for the first three years would be paid in a balloon payment at year ten.

Public Interest Benefits:

- Allows immediate new service to the public.
- Provides immediate competition in the market.
- Preserves full payment of interest and debt to the U.S. Government.

Penalty to Licensee

- Deferred interest surcharge of 0.5%.

Benefit to Licensee

- Able to move forward immediately with construction of system.

Urban Comm has consistently proposed a deferral of installment payments as a means of aiding C block licensees in speeding buildout of their systems and hence in speeding additional competition into the marketplace. Given the continued lack of significant buildout success by C block licensees, the deferral of interest payments is still the primary option the Commission should adopt.

2. The Installment Payment Grace Period Should Not Be Shortened

In determining that installment payments would resume effective March 31, 1998, the Commission also ordered that the ninety (90) day grace period for installment payments provided by 47 C.F.R. §1.2110 (e)(4)(ii) would be shortened to sixty (60) days for March 31, 1998 payments. The Commission provided no justification for shortening the payment grace period from ninety (90)

days to sixty (60) days. Under the 47 C.F.R. 1.2110(e)(4)(ii), a licensee is not deemed to be in default until it is more than ninety days delinquent in making a payment. C block licensees should be accorded the flexibility that the ninety-day non-default period provides. The grace period should therefore be reinstated as provided in the rule.

3. The Suspension Interest Should Either Be Paid In A Balloon Payment At The End Of The Ten Year Installment Payment Period Or Spread Over Equal Installments Throughout The Six Year Interest Only Period

The Commission has required C and F block licensees to pay one-eighth suspension interest with each regular installment payment, beginning March 31, 1998 until the suspension interest is paid.¹⁵ This means that licensees who elect to continue installment payments have two years in which to pay the full suspension interest. This will only exacerbate the debt payment problems of C and F block licensees. The installment payment rules provide for payment of interest over six years of the ten year repayment term.¹⁶ There is no adequate justification for shortening the interest payment term to two years for suspension interest. The situation of C block licensees did not improve during the suspension period. C block companies face the same, if not worsened, problems than they faced on March 31, 1997. Therefore, the suspension interest should either be paid in a balloon at the end of the ten year installment payment period or paid over six years in conjunction with other interest payments.

The Commission's flexibility on this point is demonstrated by the fact that licenses who elect to prepay will not have to pay any of the interest which accrued from the date of conditional grant

¹⁵ C block R&O, ¶27.

¹⁶ 47 C.F.R. § 24.711(b)(3).

of their licenses until the option election date, i.e. January 15, 1998.¹⁷ In other words, their suspension interest will be forgiven. The Commission is treating prepaying licensees as if they prepaid their licenses on March 31, 1997 or earlier. Not only is this treatment inconsistent with the treatment of C block licensees who elect installment payments, but such disparate treatment is fundamentally unfair. Indeed this suggests that all C block suspension interest should be forgiven. At a bare minimum, the payment period should be substantially extended.

B. Disaggregation Should Not Be Required For All Licenses In An MTA, Particularly For Licensees Which Hold All Of Their Licenses In One MTA

The option to disaggregate requires that a licensee disaggregate 15 MHz of spectrum that it holds across all BTAs in any given MTA. The stated purpose of this requirement is to avoid “cherry-picking”.¹⁸ However, this rule makes this option “no option” for licensees like Urban Comm. All of Urban Comm’s C block licenses are held in the same MTA. By choosing the disaggregation option, Urban Comm would be denied any opportunity to tailor its spectrum to reflect varying spectrum requirements in its BTAs. Such a prospect is highly undesirable and currently removes disaggregation from the “menu” of options available to Urban Comm.

The Commission should eliminate the MTA wide disaggregation requirement, or, at the very least, the Commission should create an exception to the MTA wide requirement for licensees which hold all of their licenses in one MTA.

¹⁷ C block R&O, ¶ 64.

¹⁸ C block R&O, ¶ 38.

C. The Option to Prepay Licenses Should Be Modified In Three Respects

The option for licensees to prepay their license debt should be revised in three respects. First, the current prepayment option allows licensees to use only 70% of downpayments from surrendered licenses toward prepayment of the face value of retained licenses. Licensees should be able to use 100% of such downpayments, especially since the remaining 30% will not be returned or be otherwise available to licensees. Similarly, interest already paid should be credited toward prepayment. The loss of 30% of downpayments and all of interest payments can only be punitive in purpose and effect. Punitive measures are not justified, especially since the overwhelming majority of C block licensees bid sensibly and in good faith. The purpose of the revision of installment payments should not be about punishment, but should be to fulfill the statutory goals of 47 U.S.C. 309(j), i.e., to promote competition and to create meaningful business opportunities for small businesses.

Second, in order to equalize the benefit of prepayments with the benefit of payments made over time, a net present value calculation of the face value of a licensee's debt should be the basis of the prepayment amount due.

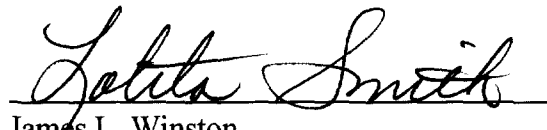
Third, the prepayment option should not be subject to the requirement that licensees pay the principal debt for all BTA licenses held within any MTA. As indicated above, this is unfair to licensees such as Urban Comm which have licenses in one MTA only.

III. CONCLUSION

For the foregoing reasons, Urban Comm requests that the Commission grant the relief requested by this Petition for Reconsideration.

Respectfully submitted,

**URBAN COMMUNICATORS PCS
LIMITED PARTNERSHIP**



James L. Winston

Lolita D. Smith

Rubin Winston, Diercks,

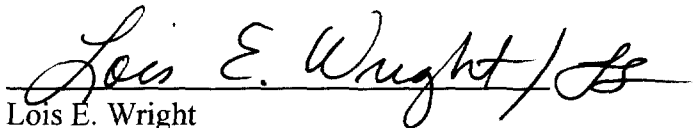
Harris & Cooke, L.L.P.

1333 New Hampshire Avenue, N.W.

Suite 1000

Washington, D.C. 20036

(202) 861-0870



Lois E. Wright

Vice President and Corporate Counsel

Inner City Broadcasting Corp.

3 Park Avenue

New York, NY 10016-5902

(212) 447-1000

Its Attorneys

November 24, 1997

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. do hereby certify that on November 24, 1997. true copies of the foregoing Petition for Reconsideration were hand delivered to the following:

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

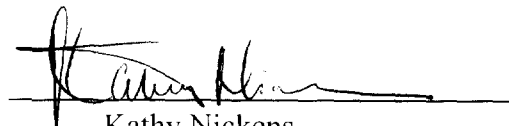
Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Daniel B. Python
Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Kathleen O'Brien Ham
Chief, Auctions Division
Federal Communications Commission
2025 M Street, N.W.
Room 5322
Washington, D.C. 20554

Jerome Fowlkes
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Catherine Sandoval
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


Kathy Nickens